Deborah G. Stevenson
Attorney-At-Law

DGS

Education Law
Constitutional Law
Litigation

Appellate Law
Public Policy Law
Administrative Law

TESTIMONY OF ATTORNEY DEBORAH G. STEVENSON IN SUPPORT OF S.B. 417

Good morning. I am Attorney Deborah G. Stevenson, who has represented the Avoletta's regarding this issue for over ten years. I am here to thank the Committee for raising this bill and to urge each of the Members to SUPPORT its adoption.

The bill will allow the Avolettas, finally, to seek just compensation, in a fair manner, for the irreversible lung damage, and other ill health effects, suffered by the Avoletta children as a result of the negligence of the Torrington Public School District and by the State Department of Education. It also rectifies an error made by the legislature that resulted in their claims being dismissed by the court.

A bit of background will be helpful. The Avolettas went through every procedure possible in order to obtain two simple things after two of their doctors (a pediatrician and an immunologist) told them the children would suffer even more deadly harm if they remained in the Torrington Public School buildings that were filled with mold and extremely unhealthy ventilation systems. The Avolettas simply asked the school district to provide a free appropriate education to the already harmed children by placing them in a safe school environment in a public school outside the district. The request was denied, despite the fact that two school hired physicians confirmed the diagnosis and disabilities of the children, and despite the fact that the unsafe condition of the water damaged Torrington buildings, as well as the poor indoor air quality resulting from inadequately installed and operated HVAC systems, was documented in the public record.

Subsequently, a decade long battle ensued, simply to obtain a free appropriate public education for the children in a safe school setting.

The Avolettas first asked the State Department of Education for help in persuading the local school district to provide the alternative placement in a safe school setting. The State Department of Education agreed that the Torrington schools were unsafe, but did nothing to compel the district to provide an alternative safe school placement for the children.

The Avolettas asked the Attorney General for help. The Attorney General told the State Department of Education that it should compel the local school district to provide an alternative safe school placement for the children, but the the Department did nothing. The Attorney General did nothing more.

The Avolettas asked the Office of Protection and Advocacy for help, but that Office provided only minimal assistance. The Avolettas sought assistance by filing for a due process hearing under Section 504 of the Rehabilitation Act, but the school district hired the hearing officer directly, and that hearing officer refused to allow medical information about the children to be presented at the hearing. As a result, the hearing officer denied the request for alternative placement.

At a certain point in the process, because the doctors said it was medically contraindicated for the children to remain in the Torrington schools, because neither the local school district nor the State would provide placement elsewhere, and, more importantly, because the Torrington School District threatened to report the Avolettas to DCF for truancy, the Avolettas were forced to unilaterally place the children in private school at their own expense, which was a big sacrifice and not easily accomplished.

The Avolettas then asked the Torrington School District to reimburse them, simply for the per pupil expenditure the school district would have expended had the children attended the public school. The request was denied.

On August 6, 2003, the Avolettas asked the State Department of Education for help in obtaining the per pupil expenditure reimbursement. The complaint alleged that the Torrington School District did not properly provide the children with a free appropriate public education in a safe school setting, did not properly place the children elsewhere in a safe school setting, and falsely alleged truancy against the Avolettas. The Department provided no further assistance. The Avolettas received no compensation.

On February 12, 2004, the Avolettas filed a complaint with, and requested the assistance of, Attorney General Richard Blumenthal to compel the Torrington School District to uphold and enforce state and federal statutes, and to provide the children with a free appropriate public education to her children in a safe school setting without discrimination due to their disabilities.

On July 27, 2004, Attorney General Blumenthal wrote to State Education Commissioner Sternberg that

> "In light of the fact that local and regional boards of education are agents of the State in carrying out the educational interests of the State as set forth in the Connecticut General Statutes, *Town of Cheshire v. McKenney*, 182 Conn. 253 (1980), your statement about the limited scope of the State Department of Education's jurisdiction and expertise concerns me....Connecticut General Statutes §10-220(a) requires local and regional boards of education to provide "an appropriate learning environment for its students" that includes, *inter alia*, "proper maintenance of facilities, and a safe school setting..." Conn. Gen. Stat. §10-220(a). Hence, in passing An Act Concerning Indoor Air Quality in Schools, Public Act No. 03-220, that became effective as of July 1, 2003 ("Indoor Air Quality Act"), our State legislature amended Conn. Gen. Stat. §10-220(a) to explicitly require local and regional boards of education to adopt and implement indoor air quality programs providing for ongoing maintenance and facility reviews of its school buildings. Conn. Gen. Stat. §10-220(a)... Insofar as the local and regional boards be charged with implementing the State's educational interest, it is clear that the State Department of Education, as the state repository of experience and expertise in matters relating to public primary and secondary education, is required to ensure that local school districts are carrying out the statutory mandate to educate students in a safe setting....These specific statutory provisions unequivocally indicate that it is the responsibility of the State Department of Education to hold local school

Tel. (860) 354-3590 P.O. Box 704 Southbury, CT 06488 Fax: (860) 354-9360
stevenson@dgslawfirm.com

districts accountable for creating appropriate indoor air quality programs, for properly maintaining their school facilities, and for remedying any situations that potentially compromise the safety of the setting where students are educated." (Emphasis added.)

On September 8, 2004, Attorney General Blumenthal responded to Education Commissioner Sternberg,

"I write to emphasize my view – and yours as well, I believe – that your responsibility includes holding the Torrington Board of Education *accountable* on an ongoing basis for fulfilling the statutory mandate to provide a safe school setting."

On September 15, 2006, Attorney General Blumenthal requested Interim Education Commissioner George Coleman to "monitor the actions of the Torrington School District and ensure that the District has taken the appropriate required and recommended corrective action with respect to providing a suitable environment for students who have health problems that may be exacerbated by unsatisfactory indoor environmental conditions in the school buildings."

Yet, the Attorney General's actions stopped at writing the letters. The Attorney General, ultimately, failed to compel the State Department of Education, or the Torrington Public School District to provide the Avoletta children with an alternative safe educational placement.

On April 26, 2007, the Avolettas filed a claim with the State Claims Commissioner. Astonishingly, even after years before telling the State Department of Education that it was the Department's duty to compel the local school district to provide an education for the children in an alternative safe school setting, nonetheless, the Attorney General's Office disputed the Avoletta's claim before the Claims Commissioner, and argued that the claim was untimely filed and that the Avolettas deserved no compensation at all. The Claims Commissioner agreed, and denied the claim.

The Avolettas then asked the legislature to vacate and dismiss the Claims Commissioner's decision and to grant relief or allow them to sue the State. During this time, our Connecticut Supreme Court issued its decision in the Connecticut Coalition for Justice in Education Funding, Inc., et al. v. Governor Jodi Rell, et al. 295 Conn. 240, 254, 990 A.2d 206 (2010.) The Avolettas brought to the attention of the legislature that the Supreme Court held in that case that under our State Constitution, all children have the right to an objectively meaningful opportunity to a suitable and substantially equal educational opportunity, standards, and resources, including such necessary components as a school environment that is healthy, safe, well maintained and conducive o learning, with minimally adequate, good, and safe physical facilities and classrooms that provide enough healthy light, space, heat, and air to permit children, including those with physical disabilities, to learn. It was largely because of the public purpose articulated in the decision in this case, in addition to all the wrongdoing by state actors, that the legislature agreed to vacate and dismiss the Claims Commissioner's decision, and allow the Avolettas to sue the state, although the legislature failed to articulate that public purpose in its decision.

On May 8, 2012, the Avolettas filed a lawsuit against the State seeking just compensation. Astonishingly, again, however, the Attorney General's office filed a Motion to Dismiss the Avoletta's claim, arguing that the claim was not timely filed and that the legislature failed to articulate a public purpose, such that the claim amounted to an improper public emolument. The court agreed and dismissed the claim.

Finally, having been harmed by the failure of the legislature to articulate the public purpose in granting them the right to sue, The Avolettas filed another Claim with the Claims Commissioner on August 28, 2013. That claim languished before the Claims Commissioner for nearly two years before the Attorney General responded to the claim with a Motion to Dismiss. Again, the Claims Commissioner agreed and dismissed the claim. On May 8, 2015, the Avolettas sought review by this legislature.

Thankfully, this Committee has responded by proposing S.B. 417. Today you have an opportunity to end the injustice of this decade long battle, and to allow the Avolettas to obtain was it rightfully theirs - reimbursement for the state's failure to provide the children with a free appropriate education in a safe school setting.

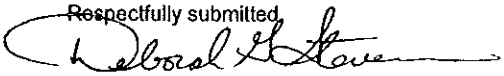
There was no need for these state actors to fail to provide alternative placement for some severely ill children whose disabilities were caused, in large part, by the state's negligence. It was unconscionable for these state actors to fight compensation for these disabled children, and cause the Avolettas to jump through enormous legal hoops for a decade.

Thank you for raising S.B. 417, and thank you for including in it the recognition that allowing the Avolettas to proceed with their claim will encourage accountable state government and discourage the reprehensible actions of these state actors to date. Thank you also for including in it a provision barring the state from claiming as a defense what they have raised before: alleged failure to comply with CGS 4-187 and 4-188; alleged failure to provide proper and timely notice of their claim; and that the claim was previously considered by the Claims Commissioner, the General Assembly, or the court. This provision truly will encourage accountable and prompt state government action in the future for all similarly situated children.

By adopting S.B. 417, you will be sending a strong message to all state agencies, that they can, and should, be held accountable, to the public whenever they fail to uphold their duty, and especially when their negligence results in physical harm to children. You will be sending a strong message that such injustice is intolerable, and that compelling the public to continue to battle for justice for more than ten years is inexcusable.

Thank you for your understanding and attention to this matter, and we strongly urge that you vote **"Yes"** to the adoption of **S.B. 417.**

Respectfully submitted,



Attorney Deborah G. Stevenson